



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: DECEMBER 02, 2022

IN THE MATTER OF:

Appeal Board No. 625068

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 625067, 625068, and 625069, the claimant appeals from the decisions of the Administrative Law Judge filed August 4, 2022, which sustained the initial determinations disqualifying the claimant from receiving benefits, effective May 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$12,096 in regular unemployment benefits recoverable pursuant to Labor Law § 597 (4); and an overpayment of Federal Pandemic Unemployment

Compensation (FPUC) benefits of \$4,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$2,444.40 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was separated from prior employment under circumstances not at issue, and filed a claim for unemployment benefits on March 15, 2021. His claim was made effective March 9, 2021, and established a weekly benefit rate of \$504. On April 4 or 5, 2021, the claimant began working full-time for the employer involved in this case, a printing company, earning

a weekly salary of \$700, and stopped certifying for benefits.

In March 2021, the claimant's 91-year-old mother, with whom he had lived since 2011, fell and broke her hip. She had surgery and was in the hospital for a period of time, and then in a rehabilitation facility for four weeks, returning home in late April 2021. When the claimant's mother first came home from rehab, she was walking with the assistance of a walker, and had a physical therapist coming to the house one or two times a week. The claimant's mother was not immediately able to cook for herself, so the claimant took on the tasks of preparing his mother's meals, in addition to organizing her medications, getting the newspaper, and taking her to doctor appointments. The claimant assisted his mother a little in the bathroom, but did not bathe or shower her; the woman who came in twice a week to help with exercises assisted the claimant's mother with bathing. Although the claimant's mother could have had a home care aide assist her with the things she was not able to do easily, she preferred not to have someone she did not know helping her. The claimant has a brother who lives about 50 minutes away who was working, and could not help with their mother's care.

On or about May 21, 2021 the claimant decided that he would resign from his job to be with his mother and help her with things around the house. On May 21, the claimant told the employer that would be his last day working because he had to stay home and care for his mother. The claimant had not been employed long enough to be eligible for paid family leave. He might have been able to take an unpaid leave of absence, or work part time, but the claimant did not ask about these options before he resigned.

After resigning, the claimant reopened his existing claim for unemployment benefits. When certifying on May 31, 2021 for the week ending May 30, 2021, the claimant was asked if the break in his claim had been due to employment, and the claimant responded "No." Thereafter, the claimant received regular unemployment benefits totaling \$12,096, and Federal Pandemic Unemployment Compensation (FPUC) benefits totaling \$4,200.

**OPINION:** The credible evidence establishes that the claimant voluntarily resigned from his employment on May 21, 2021 to provide assistance to his elderly mother. However, the record, including testimony that has been subject to cross-examination, fails to establish that it was medically necessary for the claimant to quit his job to care for his mother, or that no one other than the claimant could have helped with her care.

Specifically, the claimant has not established that his mother required 24-hour care. In fact, his credible testimony establishes that he did not attend to all of his mother's activities of daily living, and since no one else was there full time, it has not been established that full-time care was necessary. In addition, the claimant has not established that he needed to quit his job to provide the assistance he did give to his mother, since the meal preparation and assistance with his mother's medications did not need to be done during the claimant's working hours. Finally, it has not been established that there was no one else who could have cared for his mother, such as a home care aide. Rather, the evidence establishes that it was the claimant's and his mother's preference that he provide her the care she needed. This preference, however admirable and understandable, does not establish good cause to quit existing employment for unemployment insurance purposes. Accordingly, we find that the claimant voluntarily separated from employment under disqualifying circumstances.

We are not convinced by the claimant's hearing testimony that there was a contentious work

environment that was part of the reason he resigned. Not only does the claimant make this allegation for the first time at the hearing, and after providing a significant amount of testimony, but he also acknowledges that "the main thing" that led him to resign was his mother, and that even if there was no problem with management at work, he would not have continued working and would have resigned when he did.

Since good cause under the Labor Law has not been established, and the claimant is disqualified from receiving unemployment benefits, the benefits he did receive were overpaid. The FPUC benefits in the amount of \$4,200 are recoverable as a matter of law under the CARES Act. The \$12,096 in regular unemployment benefits are recoverable because on May 31, 2021, the claimant made the factually false statement that the break in his unemployment claim was not due to employment, and as a result also concealed the pertinent fact that he had quit that employment. Since the claimant stopped claiming benefits when he became employed by the publishing company, his response when he began certifying again on May 31, 2021, was factually false. Therefore, the regular unemployment benefits that were overpaid to the claimant are recoverable.

Since the claimant knew that he had stopped claiming benefits because he was

employed, his false statement upon reopening his claim was also a wilful misrepresentation. We are unpersuaded by the claimant's contention that he had made a mistake when he reopened his claim on May 31, 2021, and that he tried to correct that mistake when he spoke "to Albany," and they rectified it. Initially, we note that the claimant provided no objective evidence of such communication, and benefits continued to be paid out to the claimant. Further, even if the Board were to credit the claimant's testimony, any such attempt to provide accurate information was not made until months after his false statement, and after he had received many weeks of regular and federal benefits. Accordingly, we find that the initial determination charging the claimant with an eight-day forfeit penalty and a monetary penalty in the amount of \$2,44.40 based upon his wilful misrepresentation, was appropriate.

DECISION: The decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 625067, 625068, and 625069, the initial determinations disqualifying the claimant from receiving benefits, effective May 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$12,096 in regular unemployment benefits recoverable pursuant to Labor Law § 597 (4); and an

overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$4,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$2,444.40 on the basis that the claimant made a willful misrepresentation to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER